

BOARD OF COUNTY COMMISSIONERS

INTER-OFFICE MEMORANDUM

To: ✓ Alan Rosenzweig, Director, Office of Management and Budget
 Tony Park, Director, Public Works

From: Patrick T. Kinni, Esq.
 Sr. Assistant County Attorney

Date: February 1, 2005

Re: Revised Review of 2/3 2/3 Special Assessment Program

Pursuant to your request concerning the legal requirements, under Florida Law for valid special assessments, please be advised of the following:

The County's 2/3 2/3 special assessment program derives its genesis from traditional home rule authority of counties and Florida case law. The greatest challenge in imposing a valid special assessment is to avoid the classification as a tax. Under the Florida Constitution, no tax other than ad valorem taxes may be levied without general law authorization. However, counties require no similar specific general law authorization for special assessments. *City of Boca Raton v. State*, 595 So.2d 25 (Fla. 1992).

Special assessments and taxes are distinguishable because no requirement exists that taxes provide a special benefit to property; rather, taxes are levied for the general benefit of residents and property. As established by case law, two requirements exist for the imposition of a valid special assessment:

(1) the property assessed must derive a special benefit from the improvement or service provided; and (2) the assessment must be fairly and reasonably apportioned among the properties that receive the special benefit. *City of Boca Raton v. State*, 595 So.2d at 29. If a special assessment ordinance withstands the special benefit and reasonable apportionment tests, the assessment is not a tax and the traditional focus is then on whether the methods prescribed by the home rule ordinance were substantially followed. *Madison County v. Foxx*, 636 So.2d 39 (Fla. DCA 1994).

Many assessed services and improvements have been upheld as providing the necessary in requisite special benefit. Such services and improvements include: garbage collection; sewer improvements; fire protection; street improvements; parking facilities; downtown development; storm water management services; and water and sewer line extensions.

Although the benefit derived need not be direct and immediate, the benefit must to special and peculiar to the property assessed and not a general benefit to the entire community. An improvement or service which specifically benefits the assessed properties must also be "fairly and reasonably apportioned among the benefited properties". *City of Boca Raton v. State*, 595 So.2d 25 (Fla. 1992).

Traditionally, the courts have upheld legislative findings that the apportionment method was reasonable unless the challenger could prove that the finding was "palpably arbitrary or grossly unequal and confiscatory". *Sarasota County v. Sarasota Church of Christ*, 667 So.2d 184. The Supreme Court extended the same standard to legislative findings on the special benefit. The Court stated, the "legislative determination as to the existence of special benefits and as to apportionment of the costs of those benefits should be upheld unless the determination is arbitrary". *Sarasota County v. Sarasota Church of Christ*, 667 So.2d 184. If the assessment is not fairly and reasonably apportioned among the benefited properties, then it would be determined to be arbitrary and stricken. In which case, the assessment could not be enforced.

Importantly, in order to avoid a claim that an assessment is arbitrary and that it is not fairly and reasonably apportioned among the benefited properties, the government must uniformly impose, administer and collect special assessments or face an equal protection clause argument. In other words, special deference cannot be afforded to one group of recipients of a special assessment project without necessarily causing or creating all similar special assessments to be declared arbitrary and capricious, and in conclusion unenforceable. Claims for reimbursement of assessments previously paid would no doubt emanate as a result of any such condition.

Should you have any questions concerning this insertion, please do not hesitate to contact this office.

PTK:mm

cc: Parwez Alam, County Administrator